

BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION AND
NEW RULES I through XIV regarding) REPEAL
modalities and medications, and)
the repeal of ARM 24.165.301)
definitions, ARM 24.165.503)
approval to use modalities,)
ARM 24.165.508 permission to use)
electrical or sound physical agents)

TO: All Concerned Persons

1. On October 21, 2004, the Board of Occupational Therapy Practice (Board) published MAR Notice No. 24-165-15 regarding the public hearing on the proposed adoption and repeal of the above-stated rules relating to modalities and medications, definitions, and electrical and sound physical agents at page 2505 of the 2004 Montana Administrative Register, issue no. 20.

2. A public hearing on the notice of proposed adoption and repeal was held on November 18, 2004. Members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on November 29, 2004.

3. The Board has thoroughly considered all of the comments made. A summary of the comments received (grouped by rule) and the Board's responses are as follows:

NEW RULE I (ARM 24.165.509) APPROVED INSTRUCTION

Comment 1: One commenter recommended that the Board modify the rule to accept as approved instruction the successful completion of coursework in entry-level occupational therapy programs that include sound and electrical physical agent modalities.

Response 1: The Board was not aware that some entry-level program curricula include coursework in sound and electrical physical agent modalities. The Board is not amending the rule to include the entry-level coursework at this time. However, the graduate could demonstrate the course requirements at submission of the applicant's course syllabus and transcript.

NEW RULE II (ARM 24.165.510) APPROVED TRAINING

Comment 2: One commenter requested clarification as to the terms "approved" and "certified" regarding the definition of "qualified person" in this New Rule.

Response 2: Approved training may be provided by a "qualified person", which includes a licensed occupational therapist previously approved by the Board to administer superficial, sound and electrical physical agent modalities for iontophoresis and phonophoresis. There is no separate "certification" required of these trainers. The Board has determined that the current language creates undue confusion and has amended the rule accordingly.

Comment 3: One commenter asked whether any individuals would be "grandfathered" in for initial "certification" in administering sound and electrical physical agent modalities.

Response 3: There is no separate "certification" required. The Board determined that no individuals would be "grandfathered" and that all persons seeking approval in the administration of physical agent modalities must satisfy the Board's requirements.

NEW RULE III (ARM 24.165.511) DOCUMENTATION OF INSTRUCTION AND TRAINING

Comment 4: One commenter stated that the documentation requirements of New Rule III seemed to apply to "instruction", and that the documentation to show "training" should be defined more adequately.

Response 4: The Board concluded that the documentation requirements of this rule apply to both proof of "training" and "instruction". The Board is satisfied that the documentation is necessary to ensure adequate preparation of persons desiring to administer sound or electrical physical agent modalities.

Comment 5: One commenter suggested that requirement of a course syllabus be amended to allow other evidence of course content if a syllabus is not obtainable.

Response 5: The Board concluded that submission of a course syllabus is necessary to sufficiently verify completion of formal instruction or training programs.

NEW RULE IV (ARM 24.165.513) APPROVAL TO USE SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES

Comment 6: One commenter asked whether there should be consistency in the use of either "and" or "or" when referring to sound and electrical physical agent modalities in the title and body of New Rule IV. The commenter also expressed confusion by the use of the terms "training" and "proctored treatment" in this rule.

Response 6: The title of a rule is a general overview of all the subjects addressed within the body of the rule. The use

of "or" in (1) is to explain that even those licensees who want to use only sound or only electrical physical agent modalities would still be required to meet the requirements in New Rule IV for both sound and electrical. The term "training" is defined in New Rule II and would include "proctored treatments". Didactic education is included in the definition of "instruction" set forth in New Rule I.

NEW RULE V (ARM 24.165.514) QUALIFICATION TO APPLY TOPICAL MEDICATIONS - CLINICIAN DEFINED

Comment 7: One commenter requested clarification as to the types of "licensed medical practitioners" able to supervise the additional proctored treatments under (2) of New Rule V.

Response 7: The Board intended for the required proctored treatments to be directly supervised by licensed health care practitioners having more than one year of clinical experience in the use of these modalities. The Board has amended New Rule V to include a reference to New Rule II(2)(b) to clarify the meaning of "licensed medical practitioners".

NEW RULE VII (ARM 24.165.517) PROTOCOLS FOR USE OF TOPICAL MEDICATIONS

Comment 8: One commenter expressed concern with the requirements of (2)(c) regarding appropriate record keeping of the application or administration of topical medications. The commenter stated that it is impractical in a large facility setting to have single-use files for each patient. The commenter also stated that it might be difficult for clinicians to maintain the required information in patient charts to prove that the topical medications were purchased from a licensed Montana pharmacy.

Response 8: The Board has determined that the protocols in New Rule VII apply to both private practice and larger facility venues. The Board is satisfied that all the record-keeping requirements of (2)(c) are needed to ensure proper topical medications are used and the public is protected.

NEW RULE XII (ARM 24.165.522) ADRENOCORTICO-STEROID AGENT PROTOCOLS

Comment 9: Following the publishing of the proposed notice, Board staff discovered several spelling errors in New Rule XII. The word "adrenocortico-steriod" should be correctly spelled as "adrenocortico-steroid".

Response 9: New Rule XII has been amended accordingly.

NEW RULE XIV (ARM 24.165.525) DOCUMENTING EDUCATION AND COMPETENCE TO PERFORM SOUND AND ELECTRICAL PHYSICAL AGENT MODALITIES -- OUT-OF-STATE PRACTITIONERS

Comment 10: Two commenters expressed concern that the requirement for out-of-state education and training to be substantially similar to Montana's may make Montana licensure difficult for applicants from states that do not "license" occupational therapists.

Response 10: The Board responded that Montana is a licensure state and the Board has determined what requirements are necessary to ensure the licensure of qualified and safe practitioners in the state. The Board has concluded that out-of-state applicants must prove that their education and training in sound and electrical physical agent modalities is substantially similar to or exceeds Montana's education and training requirements.

GENERAL COMMENTS:

Comment 11: One commenter suggested that the Board provide a link on its website to the Board of Pharmacy website where the list of approved topical medications is likely to be maintained.

Response 11: The Board responded that the suggestion would be taken to the Department of Labor and Industry Health Care Licensing Bureau for consideration.

Comment 12: One commenter asked whether or not the Board would retain the modality endorsements of therapists having current Board approval to use superficial or sound and electrical physical agent modalities.

Response 12: The Board concluded that all requests for physical agent modalities approved prior to the implementation of these rules would remain in effect. Individuals were approved based on the statutory requirements that were in place when Board approval was sought. The Board determined that there is no reason to require currently approved individuals to seek approval again.

4. The Board has adopted NEW RULE I (ARM 24.165.509), NEW RULE III (ARM 24.165.511), NEW RULE IV (ARM 24.165.513), NEW RULE VI (ARM 24.165.516), NEW RULE VII (ARM 24.165.517), NEW RULE VIII (ARM 24.165.518), NEW RULE IX (ARM 24.165.519), NEW RULE X (ARM 24.165.520), NEW RULE XI (ARM 24.165.521), NEW RULE XIII (ARM 24.165.524) and NEW RULE XIV (ARM 24.165.525) and repealed ARM 24.165.301, ARM 24.165.503 and 24.165.508 exactly as proposed.

5. After consideration of the comments, the Board has amended the following rules as proposed, with the following changes, stricken matter interlined, new matter underlined:

NEW RULE II (ARM 24.165.510) APPROVED TRAINING (1) through (2)(a) remain as proposed.

(i) approved by the board to administer superficial physical agent modalities and ~~is certified to administer~~ sound and electrical physical agent modalities for iontophoresis and phonophoresis; and

(ii) and (b) remain as proposed.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-105, 37-24-106, MCA

NEW RULE V (ARM 24.165.514) QUALIFICATIONS TO APPLY TOPICAL MEDICATIONS - CLINICIAN DEFINED (1) remains as proposed.

(2) In addition to the five hours of instruction required by (1), a licensee shall, pursuant to 37-24-107, MCA, prior to administering topical medication, perform one proctored treatment in direct application of topical medications under the direct supervision of a licensed medical practitioner, as described in ARM 24.156.510(2), and either:

(a) through (3) remain as proposed.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-106, 37-24-107, MCA

NEW RULE XII (ARM 24.165.522) ~~ADRENOCORTICO-STERIOD~~ ADRENOCORTICO-STERIOD AGENT PROTOCOLS (1) Clinicians may use ~~adrenocortico-steriod~~ adrenocortico-steroid agents as directed by a licensed medical practitioner with prescriptive authority.

(2) ~~Andrenocortico-steriod~~ Adrenocortico-steroid agents act by diffusing across cell membranes to combine with specific cytoplasmic receptors. The resulting complexes enter the nucleus and bind to DNA, thereby irritating cytoplasmic synthesis of the enzymes responsible for systemic effects of adrenocortico-steroids.

(3) ~~Andrenocortico-steriod~~ Adrenocortico-steroid agents are indicated for inflammation (such as tendonitis, bursitis, arthritis, or myositis), and for antipruritic and vasoconstrictor actions.

(4) ~~Andrenocortico-steriod~~ Adrenocortico-steroid agents are contraindicated or require special care when used with children, growing adolescents and pregnant women. The use of adrenocortico-steroids is also contraindicated:

(a) through (e) remain as proposed.

(5) The ~~andrenocortico-steriod~~ adrenocortico-steroid agents permitted by this rule are:

(a) through (d) remain as proposed.

AUTH: 37-24-201, 37-24-202, MCA

IMP: 37-24-108, 37-24-109, MCA

BOARD OF OCCUPATIONAL THERAPY
PRACTICE
ELSPETH RICHARDS, CHAIRPERSON

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

Certified to the Secretary of State March 21, 2005.